

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

DEREK ROMANS, #1572653

VS.

DIRECTOR, TDCJ-CID

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CIVIL ACTION NO. 4:18cv621

ORDER OF DISMISSAL

This case was referred to United States Magistrate Judge Christine A. Nowak, who issued a Report and Recommendation concluding that the petition for writ of habeas corpus should be dismissed without prejudice for failure to prosecute. Petitioner filed objections.

In his objections, it appears that Petitioner complains that the Magistrate Judge is dismissing his case *sua sponte*. He refers to “no article 3 jurisdiction.” While Petitioner is not clear, to the extent the Court understands Petitioner’s objections, it will address them.

First, the case was referred to the United States Magistrate Judge for findings of fact, conclusions of law, and recommendations for the disposition of the case pursuant to 28 U.S.C. § 636, and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to the United States Magistrate Judge. Accordingly, there is no violation concerning a ruling from anyone other than an Article 3 Judge. The Report of the Magistrate Judge is simply a recommendation to the undersigned Article 3 Judge.

Additionally, a review of the Report shows that the Magistrate Judge recommended dismissal because Petitioner failed to comply with the Court’s Order from August 30, 2018, to complete a standard § 2254 form. Petitioner was ordered to complete the standardized form to ensure the case

could be assessed correctly and completely. Even after the Report recommending dismissal for Petitioner's failure to prosecute was issued on November 21, 2018, Petitioner still did not complete the standard form; instead, he filed objections. The Court agrees that Petitioner has failed to prosecute his case. A district court may dismiss a case *sua sponte* whenever necessary to achieve the orderly and expeditious disposition of cases. *Anthony v. Marion Cty. Gen. Hosp.*, 617 F.2d 1164, 1167 (5th Cir. 1980). Thus, dismissal based upon Petitioner's failure to prosecute the case is appropriate.

In sum, the Report of the Magistrate Judge, which contains proposed findings of fact and recommendations for the disposition of the case, has been presented for consideration. The Court has conducted a *de novo* review of the objections raised by Petitioner to the Report, and concludes that the findings and conclusions of the Magistrate Judge are correct, and adopts the same as the findings and conclusions of the Court.

It is accordingly **ORDERED** that the petition for writ of habeas corpus is **DISMISSED** without prejudice. Petitioner's objections are **OVERRULED**.

Finally, it is **ORDERED** that all motions by either party not previously ruled on are hereby **DENIED**.

SIGNED this 4th day of January, 2019.


AMOS L. MAZZANT
UNITED STATES DISTRICT JUDGE